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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,961	02/02/2004	Hans-Dietrich Polaschegg	POLA-01	9120

7590 09/12/2007
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EXAMINER

ROGERS, JAMES WILLIAM

ART UNIT	PAPER NUMBER
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1618

MAIL DATE	DELIVERY MODE
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09/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/769,961	Applicant(s) POLASCHEGG, HANS-DIETRICH	
	Examiner James W. Rogers, Ph.D.	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 9 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 July 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgment is made of applicant's claim for foreign priority based on an application filed with the European patent office on 02/03/2003. It is noted, however, that applicant has not filed a certified copy of the foreign application as required by 35 U.S.C. 119(b).

Response to Amendment

The amendment to the claims filed 02/02/2004 have been entered.

Election/Restrictions

Applicant's election without traverse of group I claims 1-8 in the reply filed on 07/19/2007 is acknowledged. Claims 9-10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 07/19/2007.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: claim 4 claims that the gel is in the form of a microgel, this feature is not described within the specification.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 1618

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Luissi et al. (US 4,587,284).

Luissi teaches an absorbent hydrogel material that may contain one or more antibacterial substances including taurolidine and taurultam. See abstract and col 4 lin 51-55. Regarding applicants limitations that the composition is used for catheter protection and can be injected into an indwelling catheter, these intended use type of limitations are considered met by the examiner because since the compositions are the same they will inherently be able to perform the same intended use even if this feature is not disclosed within Luissi. The subject matter of a properly construed claim is defined by the terms that limit its scope. It is this subject matter that must be examined. As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. Regarding the limitation of claim 4 that the composition is a microgel, since applicants have not defined the meaning of microgel within their specification the examiner interpreted this limitation with the broadest reasonable interpretation. The examiner defined microgel to simply be

Art Unit: 1618

any gel that contains crosslinked polymers that are microscopic are smaller, since the hydrogel of Luissi contains polymers that are crosslinked the limitation is considered met by the Luissi patent.

Claims 1-4,6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Marchant et al. (US 6,297,337 B1).

Marchant teaches bioadhesive polymer compositions, the polymer can be in the form of an interpolymer hydrogel and can contain pharmaceutical agents including anticoagulants and antibacterials. See abstract, col 11 lin 3-46 and claims.1-2. The intended use claims are treated the same as in the above Luissi patent. Regarding claim 4 Marchant teaches that the gels contain microgels.

Claims 1-5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Wokalek et al. (US 4,905,700).

Wokalek teaches ultrasound visualization of the human body comprising a sheet of hydrogel that may advantageously contain a disinfectant such as the antibacterial taurolidine. See abstract and col 2 lin 37-42. The intended use claims are treated the same as in the above Luissi patent.

Claims 1-5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by PFIRRMANN et al. (WO 94/03174).

PFIRRMANN teaches treatment of dentoalveolar infections with taurolidine and/or taurultam. See abstract. In example 6 a dental gel is made which contains taurolidine. The intended use claims are treated the same as in the above Luissi patent.

Claims 1-3,7-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Young et al. (US 2003/0180347 A1).

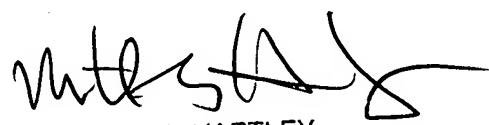
Young teaches a patch for delivery of topical agents, the patch contains a hydrogel matrix that contains one or more antimicrobial agents including salicylic acid. See abstract and [0033]. The hydrogel matrix and antimicrobial dispersed therein anticipates applicants claimed invention, the hydrogel matrix as above meets applicants intended use limitations.

Conclusion

No claims are allowed. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James W. Rogers, Ph.D. whose telephone number is (571) 272-7838. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER